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MAUREEN O. HELMER
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April 11, 1996

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Federal-State Joint Board on
Universal Service -- CC Docket No. 96-45

Dear Secretary Caton:

Enclosed are an original and 11 copies, of the response of the New York State Department of Public Service in the above-referenced proceeding.

Respectfully submitted,

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 12 1996

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In the Matter of)
)
Federal-State Joint Board) CC Docket No. 96-45
on Universal Service)
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COMMENTS OF THE NEW YORK STATE
DEPARTMENT OF PUBLIC SERVICE

INTRODUCTION AND SUMMARY

The New York State Department of Public Service (NYDPS) submits these comments in response to the Notice of Proposed Rulemaking and Order Establishing Joint Board ("Notice") released on March 8, 1996. In general, the underlying goal of this proceeding should be to ensure the provision of quality telecommunications services at reasonable rates during the transition to a competitive telecommunications market. The best way to meet this objective is through federal policies which recognize that achieving universal service objectives may require different approaches at the federal and state levels. Consistent with this approach, we support maximum state flexibility in the design of interstate funding mechanisms developed under the Telecommunications Act of 1996 ("The Act").

As to the specific issues raised in the Notice, the NYDPS opposes an increase in the federal subscriber line charge as a result of a decision to reduce the interstate carrier common line charge. It is our view that such action could jeopardize the continued provision of quality services at affordable rates and is counter to the goal of federal legislation that quality services be provided at affordable rates. Preliminary to any

consideration of such a proposal, the existing access charges should be fully examined to ensure that they reflect the efficiencies and appropriate assignment of cost recovery risk expected in the new competitive environment. Should the Joint Board determine that a portion of the remaining interstate access charges represents a universal service subsidy which should be recovered, that subsidy should be recovered explicitly from all carriers providing interstate telecommunications services, rather than through an increase in the SLC.

With respect to funding mechanisms, we recommend a rate affordability index that recognizes cost and demographic differences among states, rather than one based on an average nationwide rate. In addition, the Joint Board should consider alternatives to a nationwide proxy cost model for universal service support and should not preclude consideration of state-specific models.

Moreover, all interstate telecommunications carriers should contribute to federal support mechanisms based upon their relative interstate revenues, net of payments made to other carriers and net of revenues associated with the provisioning of the local loop. Funds could then be distributed to each state in the form of a "block grant". States would be permitted to oversee the distribution of those federal funds, upon a showing that the state has adopted a universal service plan which meets certain federal criteria.

The NYDPS believes that the Commission should take into account customer privacy issues as it develops its' universal service principles. In addition, the proposed universal service

definition should be expanded to include provision of a "white page" directory listing.

Regarding discounts for schools and libraries, so long as the goal of ensuring affordable access to basic and advanced services is met, allowances for differing federal and state discount methodologies in achieving that goal should be recognized.

Programs for low-income customers should complement state specific programs. Existing federal support programs for low-income customers should be reviewed to ensure that the benefits are going to those who need them. Efforts to promote telephone subscribership also should take into account the needs of low-income disabled customers who may require specialized equipment. Finally, the Commission should use state reporting requirements to monitor and ensure the provision of high quality service.

I. Implementation of Support Mechanisms

A. Changes to Interstate Access Charges Should Not Be Borne By Local Ratepayers

The Notice seeks comment on whether to continue the LEC assessment of interstate carrier common line (CCL) charges upon interexchange carriers (IXCs), or to eliminate or reduce the subscriber loop costs currently recovered through the interstate CCL and, instead, permit LECs to recover these costs directly from end users through an increase in the subscriber line charge (SLC). (para. 114)

The NYDPS does not believe an increase in the SLC is appropriate, and not needed to address the universal service

objectives of the 1996 Act. On the contrary, increasing the SLC would be counter to the first universal service principle in the 1996 Act that quality services be available at "just, reasonable and affordable rates."¹ Moreover, it would send the message to the American public that telephone competition and deregulation will lead to higher local rates.

While we do not believe that subscriber line charge increases are needed to address the universal service issues being examined in this proceeding, we do believe that any proposals to fund decreases in carrier access charges via increases in the SLC should be examined through the Joint Board process.

Decreasing interstate carrier access charges (and the interstate toll rates resulting from those charges) is a laudable goal, but not one that necessarily requires increases in subscriber line charges. As a prerequisite to Joint Board consideration of access charge (and possible SLC) revisions, the current regulatory framework that underlies the existing access charge levels should be fully examined to ensure that those rate levels fully reflect the operating efficiencies expected in the future competitive market, as well as, reflect a shift of the risk of cost recovery to the access providers.

Moreover, should the Joint Board determine, after the examination of access charge regulation, that a portion of the remaining interstate access charges represents a subsidy to universal service which should be recovered, that subsidy should be recovered explicitly through a contribution rate element

¹ Section 254(b)(1) of the Act.

assessed to all carriers providing interstate telecommunications services, rather than through an increase in the SLC.

B. Local Rate "Affordability"
Should Reflect Local Conditions

The Notice seeks comment on how to determine rate levels that would be "affordable" for services eligible for federal universal service support and whether such support should be based on achieving specific end user prices. (para. 26)

To the extent that a benchmark rate is used for purposes of qualifying for universal service support, the rate level should be left for the states to determine, in the context of state plans for distribution of high-cost assistance. This approach will result in benchmark rates that more accurately reflect circumstances within a particular jurisdiction (e.g., household income, cost of living, local calling area size, telephone penetration, current rate levels and rate setting policies). It also will ensure that universal service support is targeted to those customers in areas where it is most needed.

C. Consider Approaches Other than
Nationwide Proxy Model and Do Not Preclude
State Consideration of Intrastate Models

The Notice seeks comment on a specific proxy model submitted by several telecommunications carriers (Joint Sponsors) for calculating a "benchmark" cost for the provision of local telecommunications access in every census block group in the United States, excluding Alaska and the territories, if service is provided by a wireline carrier. (para. 31)

The NYDPS submitted comments, dated October 10, 1995,

regarding the use of proxy models in response to the NPRM released on July 13, 1995 in CC Docket No. 80-286. As previously stated, the use of a proxy model for determining high-cost support offers the potential for competitive neutrality and incentives to control costs, since a recipient's level of funding would not be linked to its expenditures. Conversely, it may be difficult to create a model which provides a verifiable relationship between proxy results and actual cost. This problem is likely to be exacerbated given the many differences among states (e.g., labor and material costs, regulatory and other governmental construction requirements). The result could be that companies might not "fit the mold" and would either improperly receive or be denied funding under a proxy model.

Thus, the Joint Board also may wish to consider alternatives to the proxy model that similarly would be consistent with the 1996 Act's requirement that support mechanisms be explicit and competitively neutral. In our comments to the July 13, 1995 NPRM referenced above, we supported an alternative high-cost mechanism that would be based, in large part, upon the existing high-cost loop algorithm. We recommended elimination of certain discretionary cost elements¹ to simplify the computation and to remove costs which could be easily manipulated -- i.e., costs not necessarily related to the provisioning of subscriber loops.

In addition, we supported elimination of the existing DEM weighting support mechanism in favor of a single high-cost

¹ Account 6710, Executive and Planning; Account 6720 General and Administrative; and Account 6120 General Support Expenses.

fund based upon the combination of local switching and loop costs. Combining these two cost elements would require that the costs be stated on an equivalent basis such as local cost per equivalent loop or local cost per equivalent access line. The combined local cost per loop or access line could then be compared to a nationwide average cost to determine whether a provider was eligible for high cost funding. This approach would ensure that funding is targeted to those high cost areas where it is most needed, while not being administratively burdensome.

We also believe this proposal can be adapted to situations where more than one provider is designated as an eligible telecommunications carrier. One approach might be to allow each eligible telecommunications carrier that provides its own switching and loop facilities to be eligible for universal service support for each residential access line it serves in the high cost area, where the incumbent is receiving support. Incumbent LEC local switching and loop costs could be used in this instance to determine the overall level of high cost funding.

Some eligible telecommunications carriers may provide service using incumbent switching or loop facilities. Thus, it also would be necessary to retain the switching and loop elements used in the universal service calculation to determine the amount of high cost assistance for that component of service provided by eligible carriers through their own facilities. Again, this assumes that incumbent LECs costs are used for the foreseeable future to determine the overall level of high cost funding.

Lastly, we will be reviewing a benchmark cost model

submitted by MCI, and perhaps other models, in an effort to define the cost of providing basic services in New York. Any recommendations and decisions reached in this proceeding as they relate to the use of a cost model for federal funding purposes should not preclude consideration of state-specific models or other intrastate support mechanisms.

D. Federal and State Discounts Need Not Be Harmonized

The Notice seeks comment on a methodology for formulating a discount for universal services for schools and libraries, and on how the respective State and Federal discount methodologies can be harmonized so as to ensure that these entities have access to advanced telecommunications services.
(para. 83)

While the question of which services should be provided under the definition of universal service for schools and libraries is still to be resolved in this proceeding, the likelihood is that the majority of such services will be intrastate in nature. Hence, responsibility for the recovery of foregone revenues by telecommunications providers will fall primarily to the states.

Moreover, the language of the Act does not suggest that the discount methodology developed by a State need be harmonized with the discount developed by the Commission for interstate services. Rather, it requires only that discounts are "appropriate and necessary to ensure affordable access to and use of" those services defined under subsection Section 254(c)(3) of the Act.

In fact, it is likely that the discount methodology will likely vary from state to state, given differences between the states in demographics, economics, and other local variables. Thus, while discounts should support universal service in a complimentary manner allowance for differing federal-state methodologies in achieving that goal should be recognized.

II. Administration of Support Mechanisms

A. Changes in Jurisdictional Responsibility for Universal Service Contributions Not Affected by the Act

The Notice asks whether passage of the Act should change existing assumptions about the responsibility between the interstate and intrastate jurisdictions for contributions to support for universal service.

We find no indication of congressional intent to change the existing jurisdictional configuration of federal and state authority and responsibility for interstate and intrastate services. Nor did Congress see fit to advance a new model that would significantly alter current interstate and intrastate universal service support mechanisms. Therefore, we do not expect the Commission to require carriers to contribute intrastate revenues to any interstate universal service funding mechanism, consistent with Section 152(b) of the Communications Act.

B. Interstate Contributions Should Be Based Upon Relative Interstate Revenues

The Notice seeks comment on how fund contributions should be assessed. (para. 125) The NYDPS recommends that

contributions from all interstate telecommunications carriers be based upon their relative interstate revenues, net of payments made to other carriers (e.g., access charges paid by IXC's to LEC's should be excluded from IXC revenue base) and net of interstate revenues associated with the provision of the local loop (e.g., SLC revenues should be excluded from LEC revenue base).

C. States Should Administer the
Distribution of Universal Service Funding

The Notice seeks comments regarding alternative approaches for administering interstate universal service funds. One suggestion is to allow for the collection and distribution of funds through state public utility commissions. (para. 130)

The NYDPS previously submitted comments regarding this issue in response to the NPRM in Docket 80-286, released July 13, 1995. We supported giving states the option to administer the distribution of federal universal service funds.

As a practical matter, payments could be collected at the federal level from providers of interstate services. Funds could then be distributed to each state, in an aggregate amount for each state (much like a "block grant"), based upon the funding algorithm ultimately adopted by the Commission. States should then be permitted to oversee the distribution of those federal funds, upon a showing that the state has adopted a universal service plan which:

- o ensures the basic level of universal service established by the FCC;
- o provides for the distribution of funds based upon criteria that include affordability and availability of universal service within that state;

- o provides that universal service support payments to eligible telecommunications carriers shall be provided in a non-discriminatory and equitable manner.

III. Universal Service Principles & Definition

A. Privacy Protections Should Be Considered in the Context of Universal Service Principles

The Notice seeks comment on additional principles to be considered by the Joint Board and the Commission in the development of policies for the preservation and advancement of universal service. In New York, the protection of customer privacy is incumbent on all carriers. Consistent with this view, the New York Public Service Commission (NYPSC) has adopted specific principles that offer a framework for deciding privacy related issues that arise when companies introduce services that could compromise individual customer privacy.¹ While we do not propose at this time that the list of universal services include specific privacy protections, we do recommend that providers educate customers as to the implications for privacy of the services they offer and give customers options to protect their privacy.

B. Expand Proposed Universal Service Definition

The Notice seeks comment on the following list of "core" services that would be eligible for universal service support (para. 16): voice grade access to the public switched

¹ Case 90-C-0075 - Proceeding on Motion of the Commission to Review Issues Concerning Privacy in Telecommunications - MODIFICATION AND CLARIFICATION OF STATEMENT OF POLICY ON PRIVACY IN TELECOMMUNICATIONS, issued and effective on September 20, 1991.

network, with the ability to place and receive calls; touch-tone; single party service; access to emergency services (911); and access to operator services.

The NYPSC is considering a list of basic services which is similar to what is proposed in the Notice. The NYPSC's list of basic services includes: single party access line; access to local/toll calling; local usage; tone dialing; access to emergency services; access to assistance services; access to statewide relay services; directory listing; and privacy protections.

The lists are largely the same. We understand the Notice's use of the term "voice grade access to the public switched network, with the ability to place and receive calls" to encompass the functions described on our list as "access to local/toll calling" and "local usage". The ability to place local calls for basic needs such as to medical and emergency services, schools, and local government at affordable prices is essential for the public interest. Clearly, the value of affordable access to the public network is diminished if usage of the network is not affordable.

The Notice also invites comments on additional services that should be eligible for universal service support. (para. 17). As previously noted, New York's proposed basic service list includes "directory listing". A listing in the local exchange carrier's "white page" directory is essential for customers to contact one another, and therefore should be part of the core

services.¹ Therefore, the NYDPS suggests that "directory listing" be added to the interstate list.²

IV. Support for Low-Income Customers

A. Toll Limitation Service and Reduced Deposit Requirements Should Complement State Policies

The Notice seeks comment on whether there are specific services for low income customers that should receive federal support in addition to those services included in the proposed federal definition of universal service. (para. 50).

Specifically, the Notice seeks comment on whether the Commission should require the provision of discounted toll limitation service (e.g., toll blocking, toll restrict) and reduced deposits.

The NYDPS submitted comments on September 26, 1995 regarding toll limitation service and deposit requirements, in response to the NPRM on telephone subscribership (CC Docket No. 95-115). In those comments, we agreed that customers should not be required to pay high monthly charges for voluntary toll limitation service. At this time, local exchange carriers (LECs) in New York are not required to offer voluntary customer toll limitation services; nevertheless several LECs provide this service upon a customer's request. In addition, LECs in New York may not require deposits from any residential customer, except

¹ However, customers should continue to have the right not to have their telephone number listed in a white page directory.

² As indicated in footnote 42 of the Notice, relay services are not included within the proposed federal list because those services already are funded through the existing interstate TRS support mechanism.

seasonal or short-term customers, or customers who are delinquent in their residential telephone service payments.

While we support cost-effective low-income programs, mandating a single, nationwide policy may not be as effective as state policies that are tailored to reflect conditions within a particular state. Thus, any Commission requirement should not supersede state policies regarding deposit requirements.

B. Review Eligibility for Low Income Support to Ensure Benefits Are Received by Customers Who Need Them

Consistent with the objective of increasing telephone subscribership, the NYDPS supports a collaborative federal-state approach to ensure that the benefits of low income assistance programs are received by those who need and qualify for them. Currently, both NYNEX and Rochester Telephone provide automatic enrollment and revalidation programs. These programs require a monthly matching of telephone company and appropriate social service agency data bases, validate the eligibility of current Lifeline subscribers, automatically enroll telephone subscribers that qualify for Lifeline, and remove those no longer eligible.

The results to date have shown that the automatic enrollment and revalidation programs can reduce low-income assistance costs by eliminating federal and state support to households which no longer qualify for such assistance, while also being effective at increasing subscribership among qualified low-income households.¹

¹ New York Telephone currently provides discounted telephone service to approximately 667,000 customers. Of these, the automatic enrollment program has enabled approximately 56,000 households without telephone service to request service, and has

C. Address the Equipment Needs
of Customers with Disabilities

The Notice asks parties to identify historically underserved segments of the population and potential services and features that the Joint Board may consider in addressing the provision of telecommunications services to such groups. (para. 57) The focus in the Notice is on individuals without access to residential service (e.g., seasonal workers, homeless individuals).

The NYDPS submits that individuals with disabilities also are among the historically underserved segments of the population. This group include people with speech, hearing, mobility and cognitive disabilities. Many of these customers may also be poor. Thus, while they may qualify for Lifeline service, they may be unable to purchase the equipment that will make access to the network possible. In the context of its incentive regulatory plan, New York Telephone has developed an Assistive Devices Distribution Program to make certain kinds of equipment available to Lifeline eligible people with disabilities. Such a program has the potential to bring telephone service to a previously underserved segment of the population. The Joint Board similarly may want to consider a process to determine what kinds of equipment should be supported by federal universal service support mechanisms.

provided discounted telephone service to an additional 161,000 low income customers. The revalidation process has also identified 177,000 households that are potentially no longer eligible for discounted telephone service. To date, discounts have been eliminated in 12,400 instances where Lifeline eligibility could not be proven.

V. Ensuring that Supported Services Evolve

A. Review the Definition of
Universal Service Every Three Years

The Notice seeks comments regarding how often the list of core services should be reviewed. (para. 66) The NYPSC recently concluded that a triennial review of our basic service list is appropriate. We suggest a similar time frame for review of the federal universal service list.

B. Rely on State Service Quality Performance Reports

The 1996 Act requires that quality services be available. In proposing means to measure service quality, the Notice seeks comment on the applicability of using state reporting requirements. (para. 69)

The NYPSC's service standards and reporting requirements allow for a quantitative measure of quality and encourage the provision of quality service by our local exchange carriers. In 1995, 33 local telephone companies received commendations from the NYPSC for providing excellent service. In addition, the NYPSC recently took a number of steps to reaffirm its commitment to improve the quality of service provided by New York Telephone. Also, as a part of our Competition II proceeding, service standards are being reviewed and updated to ensure they are appropriate for both incumbent providers and new entrants.

We share the Commission's view that reporting requirements should impose the least cost on carriers. We believe that reliance upon our reporting requirements would meet this objective, while providing the Commission with an accurate

measure of service quality in New York.

Conclusion

The underlying goal of this proceeding should be to ensure the provision of quality telecommunications services at reasonable rates during the transition to a competitive telecommunications market. The best way to meet this objective is through federal policies which recognize that achieving universal service objectives may require different federal and state approaches. Consistent with this approach, we support maximum state flexibility in the design of interstate funding mechanisms, including the opportunity for states to administer the distribution of federal universal service funding.

Respectfully submitted,



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Dated: April 11, 1996
Albany, New York

CC Docket No. 96-45

In the Matter of Federal-State
Joint Board on Universal Service

CERTIFICATE OF SERVICE

I hereby certify that an original plus eleven copies with two "Extra Public" copies of the above-captioned proceeding were sent via Airborne Express to Mr. Caton, and by first class United States mail, postage prepaid, to all parties on the attached service list.



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